

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

APR 18 P 5:24

WARREN SMITH,)	
)	
Plaintiff,)	U.S. DISTRICT COURT
)	BOSTON, MASS.
v.) CA 04-30205-MAP	
)	
FREDERICK MACDONALD,)	
)	
Respondent.)	

RESPONDENT'S MOTION FOR A MORE DEFINITE STATEMENT

The respondent, the Department of Homeland Security, Immigration and Customs Enforcement, by its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, hereby moves pursuant to Rules 12(e) and 81 of the Federal Rules of Civil Procedure for a more definite statement of the plaintiff's basis for his habeas corpus petition and the relief sought. As grounds for this motion, the respondent states the following.

The plaintiff submitted a letter to the Court dated September 14, 2004, which the Court deemed to be a pro se petition for habeas corpus and a request for appointment of counsel. Andrew P. Gilbert, Esq., was appointed to represent the plaintiff. Counsel for the respondent has had a number of conversations with Mr. Gilbert to discuss the plaintiff's options, including the potential for an informal resolution of the plaintiff's petition on mutually acceptable terms.

Based on its conversations with Mr. Gilbert, it was the

respondent's understanding that Mr. Gilbert would be forwarding a motion to reopen the plaintiff's administrative case for consideration by the government. No such motion has been submitted to date. The respondent has attempted to contact Mr. Gilbert to determine whether the plaintiff has determined to pursue an alternative course to the one agreed upon, but has not been successful in doing so.

Assuming that the plaintiff has determined to continue to pursue his petition for habeas corpus relief in this Court, as opposed to the informal potential resolution discussed by counsel, the respondent now files this motion for a more definite statement of the basis for the plaintiff's petition and of the specific remedy the plaintiff is seeking. The plaintiff's petition appears to challenge his continued detention as a material witness by the state authorities. The relief under those circumstances, presumably, would be an order releasing the plaintiff from state custody. There is, however, a final order of deportation in place for the plaintiff and an immigration detainer, which means that if the plaintiff were released from state custody, he would be placed immediately into the custody of the immigration authorities and deported to Jamaica, his country of origin. The plaintiff has made it clear that he does not want to be returned to Jamaica due to a fear for his life, but has not indicated in his petition what alternative remedy he wants this

Court to impose. For that reason, his petition is so vague and ambiguous, particularly as to the remedy being sought, that the respondent cannot adequately frame its response.

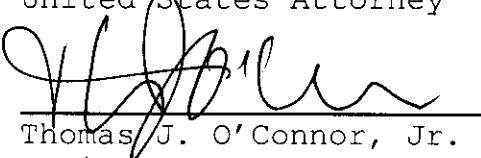
WHEREFORE, the respondent respectfully requests that its motion for a more definite statement be granted.

In accordance with Local Rule 7.1, the undersigned Assistant U.S. Attorney certifies that he attempted to confer with the plaintiff, through counsel, Andrew P. Gilbert, Esq., by telephone but has been unable to contact him.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By:


Thomas J. O'Connor, Jr.
Assistant U.S. Attorney

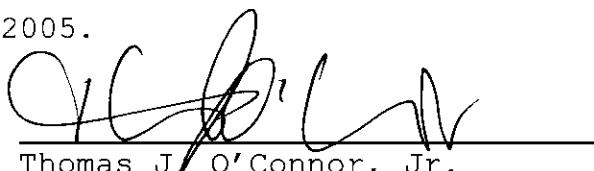
DATED: April 18, 2005

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

Andrew Gilbert, Esq.
3 Brimfield Road
Monson, MA 01057

This 18th day of April, 2005.



Thomas J. O'Connor, Jr.
ASSISTANT U.S. ATTORNEY